IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4981 of 2007(A)

CRIME NO.176 OF 2007 OF PALARIVATTOM POLICE STATION

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PETITIONER/IST ACCUSED

ANIL, AGED 37 YEARS, S/O.ARAVINDAN,
PAITHURUTHIL HOUSE, MAMANGALAM, ERNAKULAM DISTRICT.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SUB INSPECTOR OF POLICE, PALARIVATTOM, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4981 of 2007

Dated this the 14th day of August 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 498A I.P.C. The parties are before the matrimonial court and there are several proceedings between them. Investigation is now complete. Final report has already been filed, submits the learned Public Prosecutor.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. The learned Public Prosecutor submits that in as much as the final report is filed, it is not necessary to invoke the powers under Section 438 Cr.P.C. The petitioner may be directed to surrender before the learned Magistrate and seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient

and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. I am satisfied that it is not necessary to issue any directions under Section 438 and/or 482 Cr.P.C. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003 (1)KLT 339].

6. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007